

can obtain benefit of the filing date of an earlier application when not all inventors named in the joint application are the same as named in an earlier application.” Ex parte Aleta Gilderdale and Rodney W. Larson (1990 Pat. App. LEXIS 25).

Moreover, the Board of Patent Appeals and Interferences has determined that:

[W]e cannot agree with the examiner’s strict application of the inventive entity test. The examiner has construed the language “another” of 35 U.S.C. § 102(e) narrow to mean that if the inventive entity in the application differs from that in the applied prior art patent in any way other than that specifically allowed in the example given in the legislative history of Public Law 98-622 (28 PTCJ 645, 651, first par.) with respect to the amendments made to § 120, then another inventive entity is present in the prior art patent...[w]hat the examiner fails to appreciate is that the term “another” in § 102(e) has been modified significantly by the amendments to § 120 in Public Law 98-622.”

Ex parte Aleta Gilderdale and Rodney W. Larson (1990 Pat. App. LEXIS 25). The PTO in its analysis of Public Law 98-622 (1053 O.G. 10 at pages 11-12) with regard to amended § 120, states that “an application filed by A and C could claim the benefit of an earlier filed pending application of inventors A and B, to the extent that the requirements of § 120 could be met.”

The present application claims the benefit of U.S. Provisional Application No. 60/109,987, filed November 25, 1998 and is a continuation-in-part (CIP) of Application Serial No. 09/139,438, filed August 25, 1998 and issuing as U.S. Patent No. 6,141,398 assigned to the present assignee. Therefore, since the present application has the same effective date as He et al. (U.S. Pat. 6,141,398), it is not available as a reference.

The rejection of Claims 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over He et al. (U.S. Pat. 6,141,398) is respectfully traversed.

Applicants respectfully submit that the of rejection of Claims 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over He et al. is an improper rejection because the instant application is a CIP of He et al. Since the present application claims the benefit of U.S. Provisional Application No. 60/109,987, filed November 25, 1998 and is a continuation-in-part (CIP) of Application Serial No. 09/139,438, filed August 25, 1998 and issuing as U.S. Patent No. 6,141,398 assigned to the present assignee, the present application has the same effective date as He et al. (U.S. Pat. 6,141,398) and is accordingly not available as a proper reference.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 5 and 12 be withdrawn.

The objection to Claims 9-11, 15, 16, 26-29, 32, 33, and 41 is respectfully traversed.

Claims 9-11, 15, 16, 26-29, 32, 33, and 41 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form. Claims 9-11, 15, and 16 depend from independent Claim 1, which is submitted to be in condition for allowance. When the recitations of Claims 9-11, 15, and 16 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 9-11, 15, and 16 likewise are in condition for allowance.

Claims 26-29, 32, and 33 depend from independent Claim 19, which is submitted to be in condition for allowance. When the recitations of Claims 26-29, 32, and 33 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claims 26-29, 32, and 33 likewise are in condition for allowance.

Claim 41 depends from independent Claim 35, which is submitted to be in condition for allowance. When the recitations of Claim 41 are considered in combination with the recitations of Claim 35, Applicants submit that dependent Claim 41 likewise is in condition for allowance.

For the reasons set forth above, Applicants respectfully request that the objection to Claims 9-11, 15, 16, 26-29, 32, 33, and 41 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Patrick W. Rasche
Registration No. 37,916
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070